Testimony Submitted by
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My name is Lisa Nachmias Davis. I have practiced elder law and the law of trusts and estates in Connecticut for nearly twenty-five years. As part of my practice, I advise individuals and their families concerning many government benefit programs, and also advise them concerning access to ways to pay for their care, such as reverse mortgages, home equity loans, and private loans.

As well as serving on the CBA elder law section executive committee, I serve on the board of the CT chapter of the National Academy of Elder Law Attorneys, and I submit this written testimony on behalf of CT NAELA.

CT NAELA, the Connecticut Chapter of the National Academy of Elder Law Attorneys, strongly supports SB 407, "An Act Preserving the Interests of Prior Title Holders."

SB 407 ensures that the hundreds of thousands of CT citizens who live in their own homes, but also receive Medicaid benefits are not locked out of the mortgage market. It protects the security of lenders to elderly CT citizens, particularly those issuing reverse mortgages or home equity loans to help seniors stay at home. It corrects an unintended consequence that can arise if a 40-year-old law, Conn Gen. Stat. 17b-85, is applied to our modern system of government benefits. One sentence in SB 407 should, however, be slightly modified, which I'll explain in a moment.

First, a little background.

Thousands of Connecticut citizens are encouraged to apply for and currently receive, benefits under a host of government programs, despite owning assets such as homes or other real estate. A December 2015 article in the CT Mirror reports that more than 750,000 Connecticut residents are covered by Medicaid -- more than 20 percent of the population. Except for those in nursing homes, the "home" is an "exempt asset" -- ownership does not affect eligibility in the vast majority of cases. Moreover, under many programs today, ownership of assets is irrelevant, even if the asset is not a home. These include nearly 180,000 low-income adults age 19-65 who receive Medicaid under the Affordable Care Act's "Medicaid expansion," the hundreds of thousands of low and moderate-income families with children who receive Husky A and B benefits or SNAP benefits, and the thousands of low or moderately low-income seniors living at home who receive a benefit called QMB, which supplements Medicare and replaced ConnPACE. Fewer and fewer government benefit programs determine eligibility based on assets or impose any penalty on the transfer of assets. Today, almost everyone knows SOMEONE -- whether they know it or not -- who is receiving "medical assistance" of some kind, without regard to assets.

Despite these changes to the benefit rules, our statutes contain a holdover from earlier times when assets did matter. Section 17b-85 of the statutes states that no recipient of public or medical assistance "shall sell, assign, transfer, encumber or otherwise dispose of any property without the consent of the commissioner." Taken literally, an unemployed 50-year old receiving Husky D benefits cannot sell his car a mother whose children are on Husky A cannot donate her old clothes to Goodwill, and a 66-year old on QMB cannot grant a conservation easement to the local land trust.

But when would this ever come up, you may ask? Has this ever happened? If a person can have benefits without regard to assets, and can even transfer them without repercussions, why do we care about 17b-85? Does SB 407 offer to fix a problem where none exists?

Here's the problem, and it has the potential to be a big problem. The attorney general's office is of the opinion that this old law invalidates a mortgage if the borrower -- the person who "gives" the mortgage to the lender -- is one of these 750,000 recipients of Medicaid, unless he or she has the formal consent of the Commissioner of Social Services. Supporting this opinion is a decision of the Connecticut Supreme Court, Watts v. Commissioner.

The problem is that if the Attorney General is right, and the mortgage is invalid, then the lender is not protected if, later on, there is another, subsequently recorded, lien placed on the property. And if the borrower is an older person, whether a senior or someone under 65 receiving Husky D, it's quite possible that later on, there will be a lien on the property -- a lien filed by DSS when the person enters a nursing home without the expectation of returning home. Under 17b-85, the mortgage would be invalid, and the mortgage deed would not protect the lender's interest.

This happened to my client. Terry was an old lady living at home. Her family did not want her to go to a nursing home. They wanted to help her, but care is expensive. But Terry owned her own home, and she gave her daughter a mortgage on the home to cover the costs of care being paid for by her daughter. For years, her daughter and son-in-law spent, literally, hundreds of thousands of dollars on her care. Eventually her needs were too great, and she wound up in a nursing home. At that point, the home was put up for sale. The State then recorded a lien on the property. The mortgage was $250,000 and the home only sold for $200,000. Although the family had spent far more than this on Terry's care, they expected that at least they could get back the 200,000 -- the sales proceeds - - less than the mortgage. The mortgage had priority, so the State should release its lien, right? Wrong. The State demanded $60,000 (the amount of Medicaid Terry had received by this time), on the basis that under 17b-85, her mortgage was invalid -- she had started receiving assistance before the mortgage was signed, and she had not obtained the consent of the commissioner.

SB 407 would fix this problem and would ensure that our disabled or senior citizens who need to borrow money using their homes as security can do so without being denied by a lender who fears that the lender's security will be superseded by a later state lien.

SB 407 has two Sections. Section 1 is fine, but Section 2 should be revised.

Section 1 adds this sentence: "No claim or lien by the state of Connecticut under section 17b-93 of the general statutes shall be effective against any other person unless recorded on the land records of the municipality in which the land is located, and no such recorded lien shall be effective against any holder of any prior recorded interest in such land."

This is clear enough -- our land records should be the basis for determining whether or not a person has clear title. If Mom has a mortgage on the house, and then enters a nursing home, and if when the house is sold there is not enough equity to pay both parties, the prior title holder should get paid first.

Section 2 amends the "consent of commissioner" provision as follows. However, I think this needs to be slightly revised. I think it was intended to say, and should say instead:

"No such person or beneficiary shall sell, assign, transfer, encumber or otherwise dispose of any property without the consent of the commissioner, <u>provided the lack of consent by the commissioner to such sale, assignment, transfer, encumbrance or other disposition of real property shall not invalidate the disposition or otherwise impair any title or interest in the real property."</u>

I believe these changes should clarify that whether or not there may be some other legal repercussions to a conveyance without consent -- and there are some programs that do impose penalties on certain transfers -- the lack of consent is not an issue that should impair title or should be of any concern to the grantee-- the lender who receives the mortgage, the person who buys the house, or the car, or that receives the conservation easement. Title to property should be determined with reference to the land records to the maximum intent possible, and title searchers and mortgage companies should not have to be in the business of knowing a person's Medicaid status.

I urge the committee to make the suggested slight revision to SB 407 and to support its passage.